IN THE HIGH COURT OF DELHI AT NEW DELHI

WP(C) No. 15203 of 2004

Judgment reserved on: 1st February ,2007

Judgment delivered on: September ,2007

M/s Vinyl Products ..... Petitioner
Through : Mr. Rajesh Goyal, Adv.

versus

..... Respondent
Shri Ram Ujjagar & Ors. Through: Mr. Gajendra Giri, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J.

1. By way of this writ petition the petitioner seeks to challenge the

order dated 25th June, 2002 passed by the Claims Authority constituted under The Minimum Wages Act, 1948. The petitioner has also sought quashing and setting aside of the criminal proceedings and warrants of attachment dated 28.8.2004 issued by the Additional Chief Metropolitan Magistrate, Karkardooma Courts, Delhi, pursuant to the orders of the Claims Authority dated 25th June, 2002.

2. The brief facts relevant for deciding the present writ petition, inter alia, are that the respondent had invoked the jurisdiction of the Claims Authority constituted under the Minimum Wages Act to claim the differential amount of minimum wages along with the compensation w.e.f. November, 1998 upto April, 1999 and vide orders dated 25.6.2002 the Claims Authority had allowed the application of the respondents and it gave directions to the petitioner to pay the balance amount along with compensation within a period of 30 days. The present petitioner had filed its reply, but absented itself to contest the said proceedings which resulted into passing of the said ex parte order against the petitioner management. The petitioner management failed to appear on 4 dates, although notices to appear were issued by the Claims Authority. The petitioner had moved

application for setting aside of the ex parte proceedings, but in the absence of any proper explanation, the Claims Authority refused to set aside the ex parte proceedings and after hearing the parties on merits passed the impugned Award.

3. Counsel for the petitioner in support of its case contended that the Competent Authority passed final orders without considering the application moved by the petitioner under Order 9 Rule 7 seeking setting aside of the ex parte decree. Therefore, there is a blatant violation of principles of natural justice as the petitioner was neither able to cross-examine the witnesses produced by the respondents nor could file its evidence in support of its case. The second contention advanced by counsel for the petitioner was that even if no good cause was shown in the application seeking setting aside of ex parte order, still the Court could not have denied him hearing and participation in the proceedings. The third contention raised by the petitioner was that even after proceeding ex parte against the petitioner, it was still obligatory on the part of the Competent Authority to take into consideration merits of the case. The fourth contention which has been raised by counsel for the petitioner was that the

Minimum Wages Act itself is not applicable as there is no dispute as regards the rates of wages and therefore, the appropriate remedy of the respondents was either under the Payment of Wages Act, 1936 or under the provisions of the Industrial Disputes Act, 1947. The fifth contention advanced by the petitioner was that the claim of the respondents itself was barred as the respondents did not file the petition within the mandatory period of six months so far as the arrears for the period of November and December, 1998 were concerned. The sixth contention of the petitioner was that the damages which were awarded by the Competent Authority are arbitrary as no reasons have been given in support thereof in the award. Therefore, the Competent Authority has not exercised the judicial discretion in a right manner. Counsel for the petitioner in support of his proposition, that even after ex parte proceedings the petitioner had a right to participate in the proceedings and to be heard in the matter, placed reliance on the following judgments:-

1. **Badimeni Pochaiah and others vs. Gatla Akkapalli and others, AIR 1992 Andra Pradesh 42.**
2. **Arjun Singh vs. Mohindra Kumar and Others, AIR 1964 SC 993.**
3. **Sangram Singh vs. Election Tribunal Kotah and Another, AIR 1955 S.C. 425.**

4. Ravi N. Tikoo vs Deputy Commissioner (S.W.) & Ors, 128 (2006) DLT 267.

4. In support of his arguments that there is no delay on the part of the petitioner in approaching this Court under Article 226 of the Constitution of India, the petitioner had placed reliance on the judgment of the Supreme Court in **State of Madhya Pradesh and Anr. vs. Bhailal Bhai AIR 1964 SC 1006**. The petitioner further placed reliance on the judgment of **The Manager Warangal Branch, A.P. State Handloom Weavers Co-operative Society, Warangal vs The Authority under Minimum Wages Act, Warangal and Ors. 1935 Lab. I.C. 767** to support his argument that the High Court under Article 226 of the Constitution of India is entitled to interfere in a case where the Authority did not exercise its jurisdiction judiciously. Counsel for the petitioner also relied on **Syed Yakoob Vs. K.S. Radhakrishna, AIR 1964 SC 477** in support of his argument that the writ of certiorari can be issued by this Court for correcting errors of jurisdiction committed by inferior Courts or Tribunals. Counsel for the petitioner further placed reliance on **Manganese Ore (India) Ltd. vs Chandi Lal Saha And Ors, 1992 SCC (L&S) 202** & **Binod Kumar vs Union of India and Ors, 2000 (87) FLR 200** in support of his proposition that where there

is no dispute regarding the rates payable to the employee in relation to the wages payable under the Minimum Wages Act, then the jurisdiction in such a matter lies either under Section 15(1) of the Payment of Wages Act, 1936 or under Section 33-C(2) of the Industrial Disputes Act, 1947.

5. Counsel for the respondents on the other hand submitted that the conduct of the petitioner Management clearly reflects that it was totally negligent in prosecuting its case and twice it was proceeded ex parte i.e., on 10.04.2001 & 04.06.2001 and after remaining absent on four dates the petitioner had moved the application for setting aside of the ex parte order only on 16.10.2001. Counsel for the respondents further submitted that the Competent Authority had heard the arguments not on the application alone but also on the merits of the case. He also submitted that the Competent Authority had duly considered the application for setting aside the ex parte order in the final order passed by it. As regards non filing of the claim for the period November and December, 1998 the argument of the counsel for the respondents is that the Competent Authority had entertained the application and no objection at any stage was raised by the petitioner to the maintainability of the claim for the period concerned and, therefore, there is

deemed satisfaction on the part of the Competent Authority in condoning the delay and as such this objection is not available to the petitioner at this belated stage. As regards the applicability of the Minimum Wages Act is concerned, the submission of counsel for the respondents is that the remedy of the respondents lies only under the Minimum Wages Act as they were being paid less wages than the minimum wages as notified by the Statutory Authorities and, therefore, the workmen- respondents at the earliest moved an application for the minimum wages.

6. I have heard counsel for the parties. The short question which needs to be examined by this Court is, as to, whether any indulgence can be given to the petitioner by this Court while exercising the writ jurisdiction under Article 226 of the Constitution of India, who remained not only negligent in prosecuting its case before the Claims Authority, but also remained equally negligent in preferring the present writ petition on time. Admittedly, the petitioner remained absent on various dates before the Claims Authority. Perusal of the proceeding sheets filed by the petitioner on record reveals that the petitioner was absent before the Claims Authority on 21st April, 2000 then on 14th July, 2000 and again on 16th February, 2001

when the Claims Authority had given the directions to issue notice to proceed ex parte against the petitioner. On 10th April, 2001 Mr. J.S. Bajaj authorised representative of the petitioner, was present but again he absented himself on the next adjourned date i.e. 4th June, 2001, when again the notice was directed by the Claims Authority for proceeding ex parte against the petitioner and the matter was adjourned for 10th August, 2001. On 10th August, 2001 although the representative of the petitioner was present, but no steps were taken for setting aside of the ex parte proceedings and on the next adjourned date i.e. 16th October, 2001 the application was moved by the petitioner for setting aside of the ex parte proceedings, on which date the Claims Authority heard the arguments on the application as well as on its merit. The Claims Authority passed the order on 25th June, 2002. The order of the Claims Authority dated 25th June, 2002 was not challenged by the petitioner till he received warrants of attachment from the Court of Additional Chief Metropolitan Magistrate and preferred the writ petition on 14th September, 2004 i.e. again after a lapse of more than two years from the date of the interim order.

7. The petitioner has not offered any explanation as to why the

present petition has been belatedly filed against the impugned order of the Claims Authority. It is true that no limitation for entertaining the petition under Article 226 of the Constitution of India is prescribed and the Hon'ble Supreme Court in catena of cases has held that normally the period of limitation as prescribed for civil suits & appeals under the Limitation Act, 1963, shall be the guiding factor. The limitation to challenge an order against the Lower Court in appeal is 90 days. In the present case, the petitioner has not given any explanation much less sufficient or plausible explanation for the unreasonable or inordinate delay on its part in preferring the present writ petition against the impugned order of the Claims Authority and, therefore, in the absence of the same, this Court cannot come to the aid of such a negligent party. The Labour Court, Industrial Tribunal or other Authorities under various Statutes are governing the rights and liabilities of employers and employees. These Authorities are the final fact finding Authorities and, therefore, while exercising a writ jurisdiction, this Court will not appreciate or reappreciate the findings of fact as arrived by these Authorities in the exercise of the power conferred upon them under various Statutes. The Claims Authority has accepted the case of the respondents

after considering their status as that of skilled labourers on the post of machine men. The petitioner wanted to dispute this position by contending that some of them were either working as Assistant Machine Operators or as Helpers. Even in the reply filed by the petitioner management before the Claims Authority the petitioner has not categorically stated as to which of the workers out of 10 of them were employed as Assistant Machine Operators and which of them were employed as Helpers. Para 4 of the reply as filed by the petitioner before the Claims Authority needs to be referred, which is reproduced herein below:-

> "That some of the workers as mentioned in the annexures are employed by the management as assistant machine operator and remaining are the helpers. The management is paying them the regular salary and they are in the muster roll of the management."

8. It would be thus evident that the petitioner even in its reply did not place the proper facts before the Claims Authority and, therefore, under these circumstances the Claims Authority has rightly accepted the status of these workmen on the post of machine men, whose job is in the nature of skilled labourers and, therefore, they were held to be entitled to the grant of minimum wages as fixed under the Minimum Wages Act for skilled labourers. Another contention of the petitioner that the payment of

Minimum Wages Act is not attracted also does not hold any water, as the petitioner itself has disputed the nature of the job of these workmen and, therefore, this dispute regarding the exact status of these workmen whether that of skilled labourers or unskilled labourers was required to be determined by the Claims Authority and under these circumstances, it cannot be said that Section 20 of the Minimum Wages Act was not attracted in the present case. Reference is made to the following observations of the Supreme Court in **Manganese Ore (India) Ltd. vs. Chandi Lal Saha and Ors. (Supra)**

> "16. The third argument of Mr. Sanghi based on the interpretation of Section 20 of the Act is again devoid of any force. This precise argument was considered by this Court in *Town Municipal Council, Athani vs. Presiding Officer, Labour Court, Hubli* and decided in the following terms:
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> "The Minimum Wages Act is concerned with the fixing of rates – rates of minimum wages, overtime rates, rates for payment of work on a day of rest – and is not intended for enforcement of payment of wages. Under Section 20(1) of the Minimum Wages Act, in which provision is made for seeking remedy in respect of claims arising out of payment of less than minimum rates, or in respect of remuneration for days of rest, or for work on such days, or of wages at the overtime rates, the Authority is to exercise jurisdiction for deciding claims which relate to rates of wages, rates for payment of work done on days of rest and overtime rates. The power under Section 20(3) of the Minimum Wages Act given to the Authority dealing with an application under Section 20(1) to direct payment of the actual amount found due, is only an incidental power for working out effectively the directions under Section 20(1) fixing various rates under the Act. That is, if there is no dispute as to rates between the employer and the employee

> and the only question is whether a particular payment at the agreed rate is due or not, then Section 20(1) of the Minimum Wages Act would not be attracted at all and the appropriate remedy would only be either under Section 15(1) of the Payment of Wages Act, 1936, or under Section 33-C(2) of the Industrial Disputes Act."
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> 17. In the present case there was no dispute regarding the rates of wages and it is admitted by the parties that the minimum rates of wages were fixed by the Government of India under the Act. The workmen demanded the minimum wages so fixed and the appellant denied the same to the workmen on extraneous considerations. Under the circumstances the remedy under Section 20 of the Act was not available to the workmen and the Labour Court rightly exercised its jurisdiction under Section 33-C(2) of the Industrial Disputes Act, 1947."

9. As regards the contention of the counsel for the petitioner that the petitioner had a right to participate in the ex parte proceedings, there cannot be any quarrel to this legal proposition that a party has every right to participate in the proceedings from the stage when such a party joins in the proceedings without seeking reversal of the clock. In the present case the petitioner has failed to point out as to from which stage it was denied the opportunity to participate in the proceedings. The judgments cited by the petitioner in this regard are not applicable to the facts and circumstances of the present case.

10. In the light of the aforesaid discussion, I do not find any merit

in the present writ petition and the same is, accordingly, dismissed.

September , 2007 **KAILASH GAMBHIR**
rkr **JUDGE**

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